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SOUTH EAST ASIA SPECIAL ASSET MANAGEMENT BHD

v.

FOO SHYY FANG & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
VT SINGHAM J
[CIVIL SUIT NO: 24NCVC-523-02-2012]
30 APRIL 2013

C

CIVIL PROCEDURE: *Originating summons - Charge action - Foreclosure proceedings - Application to enforce statutory remedy to recover loan - Proof of debt - Filing of - Whether plaintiff as secured creditor surrendered security to Director General of Insolvency - Whether subject*
D *property becomes vested to Director General of Insolvency - Whether a distinction drawn between r. 10 and r. 11 of Sch. C of Bankruptcy Act 1967 - Whether plaintiff entitled to enforce its statutory rights - Bankruptcy Act 1967, s. 42*

E ***LAND LAW:*** *Charge - Foreclosure proceedings - Application to enforce statutory remedy to recover loan - Proof of debt - Filing of - Whether plaintiff as secured creditor surrendered security to Director General of Insolvency - Whether subject property becomes vested to Director General of Insolvency - Whether a distinction drawn between r. 10 and r. 11 of*
F *Sch. C of Bankruptcy Act 1967 - Whether plaintiff entitled to enforce its statutory rights - Bankruptcy Act 1967, s. 42*

BANKRUPTCY: *Proof of debt - Filing of - Secured creditor - Whether plaintiff as secured creditor surrendered security to Director General of Insolvency - Whether subject property becomes vested to Director General*
G *of Insolvency - Whether a distinction between drawn r. 10 and r. 11 of Sch. C of Bankruptcy Act 1967 - Whether plaintiff entitled to enforce its statutory rights - Bankruptcy Act 1967, s. 42*

The plaintiff, by originating summons (encl. 1), had applied to
H enforce their statutory remedy under the National Land Code ('NLC'), in respect of the foreclosure proceedings to recover the loan due to the plaintiff by the defendants and to be carried out by way of public auction. The charge documents (Form 16A) was pursuant to a loan granted to the defendants whereby the security
I was by property held under HS(D) 94978, No. PT 7825 Mukim

Rasah, Negeri Sembilan ('the said property'). The defendants were the registered owners of the said property. The security which was given in respect of the loan granted was prior to the defendants having been adjudicated bankrupts. On the hearing date, a legal officer from the Director General of Insolvency's Office raised an objection to the said originating summons. He submitted that the plaintiff had filed the proof of debt against both the defendants under r. 11 of Sch. C of the Bankruptcy Act 1967 and that by doing so, the subject property became vested to the Director General of Insolvency and therefore, the plaintiff was not entitled to enforce its statutory rights under the said charge. The plaintiff, however, disagreed with the said assertion as filing of the proof of debt pursuant to r. 11 of Sch. C of the Bankruptcy Act 1967 did not amount to surrendering the security. The plaintiff further drew a distinction between r. 10 and r. 11 of the said Sch. C of the Bankruptcy Act 1967

Held (allowing plaintiff's application in part):

(1) The plaintiff, as a secured creditor, did not surrender the security to the Director General of Insolvency by the mere filing of the proof of debt under s. 42 of the Bankruptcy Act 1967, when read with r. 11 of Sch. C. The said Sch. C, in particular, r. 11, provides different construction to each of the rules to be elected by the secured creditors. It was also important to consider at the same time that s. 8(2) of the Bankruptcy Act 1967 still remained intact and had drawn a distinction between unsecured and secured creditors (*Malayan Banking Bhd v. The Official Assignee*, refd). (para 14)

(2) It is important to distinguish r. 10 and r. 11 of Sch. C of the Bankruptcy Act 1967. Under r. 10, the secured creditor basically goes in and hands over the security to the Director General of Insolvency. Whereas, under r. 11, the secured creditor has merely submitted the proof of debt to the Director General of Insolvency as to the value of the property. The contention on behalf of the Director General of Insolvency that by filing the proof of debt under r. 11 of Sch. C of the Bankruptcy Act 1967, the creditor was deemed to have surrendered its title, was misplaced in law and could not be sustained. (paras 17 & 18)

(3) The plaintiff ought to be granted permission to enforce its statutory right over the secured property by virtue of the charge. However, if there was an access recovered, that access must be transmitted to the Director General of Insolvency for the benefit of other creditors. On the other hand, if the recovery of the plaintiff's claim by the statutory remedy was insufficient to meet the amount owing, then the secured creditor is entitled to come in pursuant to the filing of the proof of debt and to stand *pari passu* with other creditors for the dividend to be distributed. (para 20)

(4) The secured creditor has the proprietary rights against the said security for which the security was given to the loan. The fact that the secured creditor had filed the proof of debt pursuant to s. 42 of the Bankruptcy Act 1967, in particular, read with r. 11 of Sch. C of the Bankruptcy Act 1967, did not necessarily mean that the right of the creditor had been extinguished to enforce the security or that the secured creditor had relinquished its statutory right or had surrendered the security. There is a clear distinction between r. 10 on one hand which provides for the surrender of the security and r. 11 on the other which does not provide for the surrender of the security. Therefore, r. 11 had no application as to the purported surrender of security to the Director General of Insolvency. (para 21)

[Order accordingly.]

Case(s) referred to:

Malayan Banking Bhd v. The Official Assignee [1993] 1 LNS 294 HC ***(refd)***

Pilecon Realty Sdn Bhd v. Public Bank Bhd & Ors And Other Appeals [2013] 2 CLJ 893 FC ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, ss. 8(1), (2), 42, sch. C rr. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

National Land Code, ss. 254, 256

Rules of the High Court 1980, O. 83

For the plaintiff - TJ Lee; M/s Zairina Loh & Wong
For the defendants - Mazliana Mazlan; Legal officer, Insolvency Department

Reported by Suhainah Wahiduddin

JUDGMENT

VT Singham J:

[1] By the originating summons dated 29 February 2012 (encl. 1), the plaintiff had applied to enforce their statutory remedy under the National Land Code 1965, in respect of the charge which is commonly known as foreclosure proceedings to recover the loan due to the plaintiff by the defendants and to be carried out by way of public auction (s. 254 read together with s. 256 of the National Land Code 1965 and then read with O. 83 of the Rules of the High Court 1980). The originating summons is supported by the affidavit affirmed on 27 February 2013 (encl. 2), by En Paisal Ahmad, the Vice President of the plaintiff. The copy of the charge documents (Form 16A) (exh. PA1), the notice of demand dated 5 December 2011 (exh. PA2) and the statutory notice of default dated 25 January 2012 with respect to the charge (Form 16D) (exh. PA3) are exhibited. The reliefs applied for under the originating summons are as follows:

(1) Bahawa tanah di bawah No. H.S.(D) 94978, No: PT 7825, Mukim Rasah, Daerah Seremban, Negeri Sembilan. (selepas ini dirujuk sebagai 'tanah tersebut') dan yang digadaikan kepada plaintif di bawah Perserahan No: 3357-97, jilid 1249, Folio 67 (selepas ini dirujuk sebagai 'gadaian tersebut') dijual melalui lelongan awam di bawah Kanun Tanah Negara, 1965 untuk menjelaskan keseluruhan hutang yang perlu dibayar kepada plaintif pada tarikh perintah dibuat bersama-sama dengan faedah yang selepas dari itu sehingga tarikh penyelesaian sepenuhnya;

(2) Bahawa tarikh lelongan awam ditetapkan untuk menjalankan lelongan awam dan tarikh tersebut tidak kurang satu bulan dari tarikh perintah;

(3) Satu pelelong awam dilantik oleh Penolong Kanan Pendaftar untuk menjalankan lelongan awam tersebut;

(4) Supaya Penolong Kanan Pendaftar menetapkan satu harga rezab yang sama dengan nilai pasaran anggaran bagi tanah tersebut dengan tujuan menjalankan lelongan awam tersebut;

(5) Tawaran oleh bakal pembeli tidak dibenarkan pada lelongan awam tersebut sehingga mahkamah berpuas hati pada masa jualan itu bahawa bakal pembeli mempunyai jumlah bersamaan dengan 10% harga rezab;

A (6) Sebaik sahaja ketukan tukul terakhir, jumlah penuh harga belian bolehlah dibayar terus kepada plaintif oleh pembeli yang berjaya 'selepas ini dirujuk sebagai pembeli'. Jika pembeli tidak berbuat demikian, jumlah yang dibayar sebagai deposit kepada plaintif dikreditkan dengan segera ke dalam akaun defendan-denfendan sementara menunggu penyelesaian
B baki harga belian;

(7) Baki harga belian tersebut hendaklah diselesaikan oleh pembeli tidak lewat daripada 120 hari dari tarikh jualan dan tempoh ini tidak boleh dilanjutkan;

C (8) Sekiranya pembeli gagal membayar baki harga belian tersebut dalam tempoh yang ditentukan, jumlah yang telah dibayar sebagai deposit kepada plaintif akan dilucuthak dalam cara yang diperuntukkan dibawah s. 267A Kanun Tanah Negara 1965;

D (9) Bahawa plaintif diberi kebebasan untuk membuat tawaran di lelongan awam tersebut tanpa membayar apa-apa cagaran dan jika plaintif menjadi pembeli, diberi kebebasan untuk menolak harga belian terhadap jumlah yang tertunggak dalam gadaian tersebut termasuk kos dan perbelanjaan jualan dan juga
E segala kos terhutang dari defendan-defendan;

(10) Bahawa pihak-pihak berkuasa yang berkenaan mendaftarkan nama pembeli atau pembeli-pembeli sebagai pemilik atau pemilik-pemilik tanah tersebut bebas dari bebanan;

F (11) Sekiranya lelongan awam tidak dapat dijalankan atau tidak dijalankan atas apa-apa jua sebab sekalipun, plaintif diberi kebebasan untuk memohon tarikh lelongan awam dan harga rezab yang baru;

(12) Kos ditaksirkan;
G

(13) Kebebasan untuk memohon; dan

(14) Lain-lain perintah sebagaimana Mahkamah Yang Mulia ini memandangkan sesuai.

H **[2]** The charge documents (Form 16A) is dated 25 February 1997, pursuant to a loan granted to the defendants whereby the security was by property held under HS (D) 94978, No: PT 7825, Mukim Rasah, Daerah Seremban, Negeri Sembilan. However, both the defendants have been adjudicated bankrupt.

I (1) On 25 March 2004, the first defendant was adjudicated a bankrupt by the receiving and adjudication orders granted by the High Court, Seremban. The petition was filed by the chargee, the United Overseas Bank Bhd.

(2) On 19 July 2006, the second defendant was adjudicated bankrupt by the receiving and adjudication orders granted by the High Court, Seremban. The petition was filed by chargee, the United Overseas Bank Bhd.

[3] On 16 January 2012, the plaintiff had filed proof of debt at the office of Director General of Insolvency for the estate of the bankrupt, the first defendant pursuant to s. 42 of the Bankruptcy Act 1967 to be read with the rules under Sch. C of the Bankruptcy Act 1967, filing of proof of debt by the secured creditors. The sum owed and indebted by the first defendant to the plaintiff as stated in the proof of debt is RM255,349.12. The particulars of the charge property and the value of the charge property as assessed in the proof of debt, is as follows:

No.	Date	Charge Particular	Charge Value
1.	20 June 1996	No. H.S.(D) 94978, No. P.T. 7825, Mukim Rasah, Daerah Seremban, Negeri Sembilan.	RM150,000

[4] On 19 January 2012, the plaintiff had also filed the proof of debt for the estate of the bankrupt, the second defendant. The sum owed and indebted by the second defendant to the plaintiff as assessed in the proof of debt is RM248,585.34. The particulars of the charge property and the value of the charge property as stated in the proof of debt, is as follows:

No.	Date	Charge Particular	Charge Value
1.	20 June 1996	No. H.S.(D) 94978, No. P.T. 7825, Mukim Rasah, Daerah Seremban, Negeri Sembilan.	RM150,000

[5] Both the defendants were the registered owners of the said property. The security which was given in respect of the loan granted to the defendants was prior to the defendants having been adjudicated bankrupts.

[6] However, the legal officer from the Director General of Insolvency's office who attended court on 19 June 2012 did not raise any objection to the originating summons except to inform the court on the issue of interest claimable. Nevertheless, on the

A next hearing date on 28 June 2012, another legal officer from the Director General of Insolvency's office attended court and had raised objection to this originating summons. The sole ground of the objection raised on behalf of the Director General of Insolvency was that, the plaintiff had filed the proof of debt
B against both defendants who had been adjudicated bankrupt and the same had been received by the Director General of Insolvency's office. The rule under which the proof of debt was filed is not disputed and it was pursuant to r. 11 of Sch. C of the Bankruptcy Act 1967.

C

Rule 11 of Schedule C of the Bankruptcy Act 1967 provides:

> **If a secured creditor does not either realize or surrender his security** he shall state in his proof the particulars of his security, the date when it was given and the value at which
D he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. (emphasis added)

The legal officer from the Director General of Insolvency's office had submitted that by filing the proof of debt under r. 11 of
E sch. C of the Bankruptcy Act 1967, the subject property became vested to the Director General of Insolvency and therefore, the plaintiff is not entitled to enforce its statutory rights under the said charge. On the other hand, learned counsel for the plaintiff did not
F agree with the position taken by the Director General of Insolvency's office as filing of the proof of debt pursuant to r. 11 of Sch. C of the Bankruptcy Act 1967 does not amount to surrendering the security and drew a distinction between r. 10 and r. 11.

G **[7]** Both parties had filed their written submissions and were given the opportunity to advance oral submissions for clarification sought by this court. Further submissions were also advanced by both the parties on two cases pointed out by this court which was decided by the courts in India whose Provisional Insolvency
H Act 1920, in particular, Sch. C under proof of debt is *pari materia* with the rules under Sch. C of the Bankruptcy Act 1967.

[8] Based on the argument, it would appear that the position taken by the Director General of Insolvency is that, the title of
I the security is deemed to have been surrendered to the Director General of Insolvency even if the plaintiff had invoked r. 11. Therefore, it is contended on behalf of the defendants that the property is vested with the Director General of Insolvency.

[9] In order to arrive at a just decision, it is important to refer, first, to s. 8(1) of the Bankruptcy Act 1967 and read together with s. 8(2) of the Bankruptcy Act 1967.

Section 8(1) of the Bankruptcy Act, 1967 provides:

> On the making of a receiving order the Director General of Insolvency shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall proceed with or commence any action or other legal proceeding in respect of such debt unless with the leave of the court and on such terms as the court may impose.

It would appear that s. 8(1) of the Bankruptcy Act 1967 refers to unsecured creditors. However, it is important to read s. 8(2) of the said Act which is the relevant provision for the purpose of this case as the plaintiff are secured creditors.

Section 8(2) of the Bankruptcy Act 1967 provides:

> This section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed-nor shall it operate to prejudice the right of any person to receive any payment under or by virtue of s. 31 of the Employment Act, 1955 of the States of West Malaysia or any corresponding provisions in Sabah and Sarawak.

[10] By virtue of s. 8(2) of the said Act, notwithstanding the chargors have been adjudicated bankrupts, the plaintiff as the secured creditors is permitted to realise or otherwise deal with the security in the same manner as they would have been entitled to realise or deal with it if this section had not been passed.

[11] This court is of the considered view that this sub-section (2) of s. 8 remains intact unless the plaintiff/chargee decides to exercise its option under r. 10 of Sch. C of the Bankruptcy Act 1967. Schedule C under proof by secured creditors provides:

Rule 9 of Schedule C provides:

> If a secured creditor realizes his security he may prove for the balance due to him after deducting the net amount realized.

Rule 10 of Sch C provides:

> If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors he may prove for his whole debt.

Rule 11 of Sch. C provides:

> If a secured creditor **does not either realize or surrender his security** he shall state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. (emphasis added).

Rule 12 of Sch. C provides:

> (a) Where a security is so valued the official assignee may at any time redeem it on payment to-the creditor of the assessed value.
>
> (b) If the official assignee is dissatisfied with the value at which a security is assessed he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as are agreed on between the creditor and the official assignee, or as in default of agreement the court directs. If the sale is by public auction the creditor or the official assignee on behalf of the estate may bid or purchase: Provided that the creditor may at any time by notice in writing require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not within six months after receiving the notice signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the **equity of redemption or any other interest in the property** comprised in the security, which is vested in the official assignee, **shall vest in the creditor**, and the amount of his debt shall be reduced by the amount at which the security has been valued. (emphasis added)

[12] Further, the legal officer on behalf of the Director General of Insolvency as a desperate attempt seem to rely on the proviso that the plaintiff did not give notice in writing to require the Director General of Insolvency to elect whether he will or will not exercise his power of redeeming the security. This proviso refers to the power of redemption. The proviso in the respectful view of this court read with r. 11 does not state that the secured creditor

or the plaintiff has in any way or is deemed to have surrendered its security when the plaintiff had elected to invoke r. 11 of Sch. C which is expressly clear and is distinguishable when compared to r. 10. Under r. 10, the secured creditor surrenders his security if he has opted to invoke r. 10. Whereas under r. 11, the secured creditor does not surrender his security if he has opted to file his proof of debt under r. 11. Therefore, if the secured creditor does not surrender his security under r. 11 as in the present case, the security cannot vest in the office of the Director General of Insolvency and the contention on behalf of the Director General of Insolvency is misplaced in law.

[13] In other words, the Director General of Insolvency has the option to pay the assessed value to the secured creditor and redeem the security which was not done by the Director General of Insolvency. There is no evidence of any agreement between the parties, which means, the Director General of Insolvency must apply to the court for any orders. There is no application made on behalf of the Director General of Insolvency for leave of the court's direction. Further, if the property is sold by public auction, both the creditors and the Director General of Insolvency have the option to bid at the public auction which in the present case, did not also happen because of the said objection by the Director General of Insolvency to this originating summons. The matter could not proceed for the public auction and the plaintiff is kept waiting infinitely to enforce his statutory remedy pending the outcome of the decision of this court in the present case. Neither was any attempt made by the Director General of Insolvency to put up the property for sale. As correctly pointed out by learned counsel for the plaintiff, this is a case of the Director General of Insolvency's office taking an inconsistent position in law, unsure of their position and unsure of their function when r. 11 is invoked by the secured creditor and 'blowing hot and cold'.

[14] This court is of the respectful view that mere filing of the proof of debt under s. 42 of the Bankruptcy Act 1967, in particular, when read with r. 11 of Sch. C, the plaintiff, as a secured creditor, did not surrender the security to the Director General of Insolvency. The contention on behalf of the Director General of Insolvency, with respect, is a misreading of the rules under Sch. C, in particular, r. 11. which provides different construction to each of the rules to be elected by the secured

creditors. It is also important to consider at the same time that s. 8(2) of the said Act still remains intact and has draw a distinction between unsecured and secured creditors (r. 1 till r. 8 of Sch. C of the Bankruptcy Act 1967 provides for unsecured creditors whereas r. 9 till r. 12 of Sch. C of the Bankruptcy Act 1967 provides for secured creditors).

[15] It is not disputed by the Director General of Insolvency's office that under Sch. C, the plaintiff being the secured creditor has three options, namely:

(a) First, as provided under r. 9

(b) Secondly, as provided under r. 10; and

(c) Thirdly, as provided under r. 11.

In the present case, the plaintiff had opted to invoke r. 11 and rightfully did not surrender the security to the Director General of Insolvency's office but had merely complied with requirements of r. 11. It is also important to refer to the case of *Malayan Banking Bhd v. The Official Assignee* [1993] 1 LNS 294; [1993] 2 AMR 48, which has expressly referred to s. 8(2) of the Bankruptcy Act 1967 where s. 8(2) preserve the right of the secured creditor in relation to the secured property belonging to someone who is now a bankrupt and who has the choice to enforce his statutory right.

In *Chinese Tin Mines Rehabilitation Loans Board v. Official Assignee, FM* [1957] MLJ 65, Thomson LJ (as he then was) said at p. 67:

> ... the mere fact of the debtor's bankruptcy did not deprive the creditor of his contractual rights nor did it affect his right to satisfy himself in respect of them out of the proceeds of his security.

[16] Rule 9 of Sch. C of the Bankruptcy Act 1967 is actually in consonant with s. 8(2) of the Act which allows the secured creditor to realise his security given by the bankrupt before he was adjudicated bankrupt. Whereas r. 10 of Sch. C of the Bankruptcy Act 1967 allows the creditor to surrender his security to the Director General of Insolvency for the general benefit of all the creditors. On the other hand, r. 11 of sch. C of the Bankruptcy Act 1967 refers to the value of the property in respect of the proof of debt filed but the secured creditor does not surrender his security to the Director General of Insolvency.

[17] It is important to distinguish r. 10 with r. 11. Under r. 10, the secured creditor basically goes in and hands over the security to the Director General of Insolvency. Whereas, r. 11 does not really mean that he has gone in but he has merely submitted the proof of debt to the Director General of Insolvency as to the value of the property and if the value of the property is not sufficient to meet the debt and for the balance, he stands with the other creditors from the dividends to be paid. In other words, the secured creditors stays out and he comes in when the value of the property is not sufficient to meet the debt.

[18] The contention on behalf of the Director General of Insolvency, is that, by filing the proof of debt under r. 11 of Sch. C of the Bankruptcy Act 1967, the creditor is deemed to have surrendered its title is misplaced in law and cannot be sustained. In so far as the security, the secured creditor, in the present case, did not surrender its security to the Director General of Insolvency. In this context, it is important to refer to the recent decision of the Federal Court, *Pilecon Realty Sdn Bhd v. Public Bank Bhd & Ors and Other Appeals* [2013] 2 CLJ 893 where the Federal Court said at p. 907:

> The duty of the courts is to make a construction to cure the mischief and advance the remedy. It is not our duty either to add or to take away the meaning of the words of a statute unless there are good reasons for thinking that the legislature had intended to limit its operation.

[19] This court is of the considered view that this court cannot extend the application of certain provisions in the said Act or to give an extended construction to suit the convenience and wishes of the Director General of Insolvency when the Legislature had failed to express such an intention as contended on behalf of the Director General of Insolvency and any extension will usurp the function of the Legislature which is not the function of this court. The Federal Court in that case had further said that:

> The duty of the courts is to give full effect to the language of the law. The function of the courts is to construe the language of the referral and related provisions as they stand, to give effect to the purpose of enacting the provision, and the mischief which existed which the legislature sought to eliminate.

In *R v. Mansed Jones* [1889] 23 QBD 29 Lords Coteridge CJ said at p. 32:

> This court can say what parliament has said and not what ought to have been said.

[20] Having given a purposive interpretation to r. 11 of sch. C of the Bankruptcy Act 1967, it is the considered view of this court that the plaintiff had not surrendered the security to the Director General of Insolvency and ought to be granted permission to enforce its statutory right over the secured property by virtue of the charge. However, if there is an access recovered, that access must be transmitted to the Director General of Insolvency for the benefit of other creditors. On the other hand, if the recovery of the plaintiff's claim by the statutory remedy is insufficient to meet the amount owing, then the secured creditor is entitle to come in pursuant to the filing of the proof of debt and to stand *pari passu* with other creditors for the dividend to be distributed.

[21] It is important to stress that the secured creditor has the propriety rights against the said security for which the security was given to the loan. The court wishes to stress that the fact that the secured creditor has filed the proof of debt pursuant to s. 42 of the Bankruptcy Act 1967, in particular, read with r. 11 of sch. C of the Bankruptcy Act 1967 does not necessarily mean that the right of the creditor has been extinguished to enforce the security or secured creditor has relinquished its statutory right or has surrendered the security. If the intention of parliament in respect of r. 11 of sch. C of the Bankruptcy Act 1967 was to the effect that, by filing the proof of debt, the secured creditor has in fact surrendered the security to Director General of Insolvency, it would have expressly stated so and there would not be a distinction between r. 10 and r. 11 which has expressly excluded the word "surrender his security". In other words, there is a clear distinction between r. 10 on one hand which provides for the surrender of the security and r. 11 on the other which does not provide for the surrender of the security. Therefore, r. 11 has no application as to the purported surrender of security to the Director General of Insolvency as contended on behalf of the Director General of Insolvency. On the factual matrix of this case, with respect, it must be noted that the Director General of

Insolvency has not been vigilant since r. 11 was invoked by the secured creditor to file the proof of debt and did not take any steps to redeem the security or settle the assessed value of the security.

[22] In the circumstances, the originating summons is allowed for prayer 1. The total sum due on the loan pursuant to the charge is recorded as RM539,934.46. However, as for the first defendant, the debt due as at the date of filing the proof of debt is RM255,249.12. As for the debt due by the second defendant as at the date of filing the proof of debt it is RM284,585.34. The plaintiffs counsel has given an undertaking to file further affidavit to state the total amount as stated in the two proof of debt filed. As for prayer 2, the public auction is fixed on 28 June 2013. Prayers No. 3, 4, 5, 6, 7, 8 and 9 is allowed. No order for prayer No. 10. Prayer No. 11 and 13 is allowed. Costs is fixed at RM10,000.